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OFFICE OF PETITIONS

In re Patent No. 6,863,754	:	DECISION GRANTING PETITION
Issue Date: March 8, 2005	:	UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/039,527	:	REQUEST FOR CERTIFICATE
Filed: November 7, 2001	:	OF CORRECTION
Attorney Docket No. 212760.091.9053	:	

This is a decision in response to the communication filed July 29, 2005 requesting, in effect, that a decision on the renewed petition under 37 CFR 1.78(a)(3), filed on February 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 be rendered and that the claim for priority to prior-filed nonprovisional Application No. 09/415,696, filed October 12, 1999 be added to the front page of the Letter Patents by way of a Certificate of Correction.

A review of the record discloses that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was not made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and did not include a proper reference to the prior-filed application as required by 37 CFR 1.78a(2)(i) and 1.78(a)(2)(iii). On September 24, 2004 a petition under 37 CFR 1.78(a)(3) was filed; however, the petition was dismissed in a decision mailed January 14, 2005, since it did not include a proper reference to the prior-filed application. In response, on February 22, 2005, a renewed petition was filed, including an amendment in compliance with 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii). The application issued as U.S. Patent No. 6,863,754 on March 8, 2005. On June 6, 2005, a communication was mailed holding the decision on the renewed petition in abeyance to permit applicant to file a request for a Certificate of Correction. On July 29, 2005, the present communication was filed, along with a request for a Certificate of Correction.

Since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with the submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481, Rev. 2, May 2004, page 1400-85, second column.

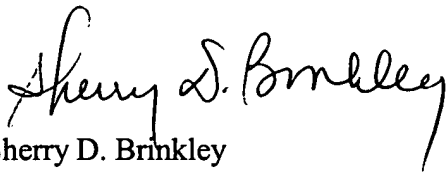
The renewed petition, as supplemented on July 29, 2005, complies with the requirements of 37 CFR 1.78(a)(3). Accordingly, the petition is **GRANTED**.

A corrected Filing Receipt, which includes the priority claim to the above-noted, prior-filed nonprovisional application, accompanies this decision.

It is noted that petitioner argues that no fee for the Certificate of Correction should be required since the Requirement for Information stated that "the petition did not reach the appropriate official in sufficient time to avert the issuance of the application into the issued patent". Petitioner's argument is not well taken. Approximately two weeks existed between the filing of a grantable petition (the renewed petition) on February 22, 2005 and the date of issue of March 8, 2005. Consequently, the printing of the patent had already progressed to a point where the requested data could not be included in the printed patent. The \$100 Certificate of Correction fee is required and is being charged to counsel's deposit account as authorized.

Any inquiries concerning this decision may be directed to Sherry Brinkley at (571) 272-3204.

This patented file is being forwarded to the Certificates of Correction Branch for processing the request for a Certificate of Correction.



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Frances M. Hicks
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ATTACHMENT: Corrected Filing Receipt